

Application No.: 10/757,279
Filing Date: January 13, 2004

REMARKS

Claims 42-82 are pending in this application. The Examiner rejected Claims 42-82. In particular, the Examiner objected to Claims 43-49, 51-56, 58-77, and 79-82 for formalistic reasons. The Examiner rejected Claims 68, 71, and 72 under 35 U.S.C. § 112, first paragraph. In addition, the Examiner rejected Claims 44-48, 52-56, 58-60, and 75-80 under 35 U.S.C. § 112, second paragraph. The Examiner also rejected Claims 78-82 under 35 U.S.C. § 101. The Examiner further rejected Claims 42, 43, 45-51, 53-79, 81, and 82 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,058,588 ("the Kaestle patent"). Finally, the Examiner rejected Claims 42-60, 64-68 and 71-82 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,942,877 ("the Sakai patent").

By this amendment, Applicants have amended Claims 42-82. Reconsideration of the application, as amended, is respectfully requested.

I. SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Submitted concurrently herewith is a Supplemental Information Disclosure Statement citing references from related applications of the assignee. While the Applicants do not believe that these references will affect the patentability of the pending claims, Applicants respectfully request the Examiner to consider the pending claims in connection with these references in order to make them of record.

II. OBJECTION TO CLAIMS

The Examiner objected to Claims 43-49, 51-56, 58-77, and 79-82 for formalistic reasons. The Examiner stated that one of the "Claim" terms should be deleted from line 1 of each claim. Applicants have amended Claims 43-49, 51-56, 58-77, and 79-82 accordingly.

III. REJECTION OF CLAIMS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

The Examiner rejected Claims 68, 71, and 72 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In response, Applicants have amended Claims 68, 71, and 72 to comply with the written description requirement. Withdrawal of the rejection of Claims 68, 71, and 72 under 35 U.S.C. § 112, first paragraph, is requested.

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IV. REJECTION OF CLAIMS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

The Examiner rejected Claims 44-48, 52-56, 58-60, and 75-80 under 35 U.S.C. § 112, second paragraph. The specific rejections made by the Examiner and Applicants' response to these rejections are discussed below.

A. Claims 44-48, 52-56, 58-60, and 75-77

The Examiner stated that Claims 44-48, 52-56, 58-60, and 75-77 are indefinite because they fail to provide further structural limitations. In response, Applicants have amended Claims 44-48, 52-56, 58-60, and 75-77 to clarify their inventive features.

B. Claims 78-80

The Examiner stated that Claims 78-80 are indefinite because they fail to positively recite method steps wherein communication with a physiological monitor takes place. In response, Applicants have amended Claims 78-80 to positively recite the method steps.

In light of the above amendments to the claims, Applicants respectfully request the Examiner to withdraw the rejection of Claims 44-48, 52-56, 58-60, and 75-80 under 35 U.S.C. § 112, second paragraph.

V. REJECTION OF CLAIMS UNDER 35 U.S.C. § 101

The Examiner rejected Claims 78-82 under 35 U.S.C. § 101. The Examiner stated that independent Claim 78 appears to be directed to non-statutory subject matter because it does not appear to produce a tangible result. Claims 79-82 depend from Claim 78. In response, Applicants have amended Claims 78-82 to clarify their inventive features. Withdrawal of the rejection of Claims 78-82 under 35 U.S.C. § 101 is requested.

VI. REJECTION OF CLAIMS UNDER 35 U.S.C. § 102(b)

The Examiner rejected Claims 42, 43, 45-51, 53-79, 81, and 82 under 35 U.S.C. § 102(b) as being anticipated by the Kaestle patent. The Examiner also rejected Claims 42-60, 64-68 and 71-82 under 35 U.S.C. § 102(b) as being anticipated by the Sakai patent. In view of the above claim amendments and the following discussion, Applicants respectfully traverse this rejection.

A. Independent Claim 42

Focusing in particular on Claim 42, a system for monitoring a physiological parameter of a patient comprises a physiological sensor, a physiological monitor, and a connector. The physiological sensor is operable to detect a physiological parameter and comprises a first LED and an information element electrically connected to a common signal line. The first LED operates in response to a drive signal on the common signal line and the information element provides information data on the common signal line. The physiological monitor provides the drive signal to the first LED and receives the information data from the information element. The connector is operable to provide communication between the physiological monitor and the common signal line of the physiological sensor.

Neither the Kaestle patent nor the Sakai patent teaches the limitations of Claim 42. Referring to Figure 5 of the Kaestle patent, a sensor 20 communicates with an oximeter (or monitor) 21 using a plurality of connection lines. The sensor 20 includes light emitting diodes 22, 23, 24, 25, a photodetector 34, and a resistor (or encoding element) 46. The light emitting diodes 22, 23, 24, 25 communicate with LED driver circuits 30, 31 in the oximeter 21 using a first set of connection lines 26, 27, 28, 29. The photodetector 34 communicate with an amplifier and filter unit 35 in the oximeter using another connection line 54. The resistor 46 communicates with a multiplexer 37 in the oximeter 21 using yet another connection line 48.

Referring to Figure 1 of the Sakai patent, a probe 1 communicates with a main unit 3 using a plurality of signal lines. The probe 1 includes a memory device 56 and light emitting diodes 20, 21. The memory device 56 communicates with a CPU 10 in the main unit 3 using a data bus or a first signal line. The light emitting diodes 20, 21 communicate with a LED driving circuit 19 in the main unit 3 using two other signal lines. Other devices in the probe 1 communicate with the main unit 3 using yet more signal lines.

The references cited by the Examiner do not disclose, teach, or suggest a physiological sensor with a first LED and an information element electrically connected to a common signal line, the first LED operating in response to a drive signal on the common signal line, and the information element providing information data on the common signal line. Thus, Applicants assert that Claim 42 is not anticipated by the Kaestle patent or the Sakai patent. Applicants therefore respectfully submit that Claim 42 is patentably distinguished over the cited references and Applicants respectfully request allowance of Claim 42.

B. Dependent Claims 43-49

Claims 43-49, which depend from Claim 42, are believed to be patentable for the same reasons articulated above with respect to Claim 42 and because of the additional features recited therein.

C. Independent Claim 50

Claim 50 is directed to a physiological monitor for monitoring a physiological parameter of a patient. The physiological monitor comprises a driver circuit operable to provide a drive signal in response to information data, a common signal line on which the drive signal is provided and on which the information data is received, and a connector that is in communication with the driver circuit and the common signal line.

Because the references cited by the Examiner does not disclose, teach, or suggest physiological monitor with a common signal on which a drive signal is provided and on which information data is received, Applicants assert that Claim 50 is not anticipated by the Kaestle patent or the Sakai patent. Applicants therefore respectfully submit that Claim 50 is patentably distinguished over the cited references and Applicants respectfully request allowance of Claim 50.

D. Dependent Claims 51-56

Claims 51-56, which depend from Claim 50, are believed to be patentable for the same reasons articulated above with respect to Claim 50 and because of the additional features recited therein.

E. Independent Claim 57

Claim 57 is directed to a physiological sensor which provides information to a physiological monitor in addition to at least one physiological signal usable to determine a physiological parameter of a patient. The physiological sensor comprises a common signal line, at least one LED, and an information element. The common signal line receives at least one LED drive signal from a physiological monitor. The LED is electrically connected to the common signal line and operates in response to the LED drive signal. The information element is electrically connected to the common signal line and operable to provide information on the common signal line to the physiological monitor.

Because the references cited by the Examiner do not disclose, teach, or suggest a physiological sensor with a LED and an information element electrically connected to a common signal line, Applicants assert that Claim 57 is not anticipated by the Kaestle patent or the Sakai patent. Applicants therefore respectfully submit that Claim 57 is patentably distinguished over the cited references and Applicants respectfully requests allowance of Claim 57.

F. Dependent Claims 58-77

Claims 58-77, which depend from Claim 57, are believed to be patentable for the same reasons articulated above with respect to Claim 57 and because of the additional features recited therein.

G. Independent Claim 78

Claim 78 is directed to a method of communicating between a physiological probe and a physiological monitor. The method comprises providing a drive signal from said physiological monitor to said physiological probe on a common signal line, wherein the drive signal has a first range of operating frequencies. The method also comprises providing information data on the common signal line from an information element in the physiological probe to the physiological monitor, wherein the information data is encoded in a probe signal having a second frequency that is lower than the first range of operating frequencies for the drive signal.

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Because the references cited by the Examiner do not disclose, teach, or suggest providing a drive signal from a physiological monitor to a physiological probe on a common signal line and also providing information data on the common signal line from an information element in the physiological probe to the physiological monitor, Applicants assert that Claim 78 is not anticipated by the Kaestle patent or the Sakai patent. Applicants therefore respectfully submit that Claim 78 is patentably distinguished over the cited references and Applicants respectfully request allowance of Claim 78.

H. Dependent Claims 79-82

Claims 79-82, which depend from Claim 78, are believed to be patentable for the same reasons articulated above with respect to Claim 78 and because of the additional features recited therein.

VII. NO DISCLAIMERS OR DISAVOWALS

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

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VIII. CO-PENDING APPLICATIONS OF ASSIGNEE

Applicants note that the following U.S. Patent Applications claim a priority benefit to U.S. Application No. 08/478,493, filed June 7, 1995.

Serial Number	Attorney Docket No.	Title	Filed
08/478,493 (Now Patent No. 5,758,644)	MASIMO.004A	Manual and Automatic Probe Calibration	06/07/1995
08/754,474 (Now Patent No. 5,823,950)	MASIMO.004DV1	Manual and Automatic Probe Calibration	11/12/1996
09/016,924 (Now Patent No. 6,011,986)	MASIMO.004C1	Manual and Automatic Probe Calibration	02/02/1998
09/451,151 (Now Patent No. 6,397,091)	MASIMO.004C2	Manual and Automatic Probe Calibration	11/30/1999
10/005,711 (Now Patent No. 6,678,543)	MASIMO.004C3	Optical Probe and Positioning Wrap	11/08/2001
10/757,279	MASIMO.004C4	Manual and Automatic Probe Calibration	01/13/2004
11/640,077	MASIMO.004C5	Manual and Automatic Probe Calibration	12/15/2006

Applicants note that cited references, office actions, responses, and notices of allowance currently exist or will exist for the above-referenced matters. Applicants also understand that the Examiner has access to sophisticated online Patent Office computing systems that provide ready access to, for example, specification and drawing publications, pending claims and complete file histories, including, for example, cited art, office actions, responses, and notices of allowance.

However, if the Examiner cannot readily access these file histories, Applicants would be pleased to provide any portion of any of the file histories at any time upon specific Examiner request.

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IX. CONCLUSION

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Examiner is cordially invited to contact the undersigned such that any remaining issues may be promptly resolved. Also, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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